

Gross receipts from proceeds from the sale of semen used for artificial insemination of livestock for direct agricultural production are exempt from taxation. 35 ILCS 120/2-5(26) (1996 State Bar Edition). (This is a GIL).

September 3, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated July 26, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We are writing to you on behalf of our client who is engaged in the distribution of bovine semen and related supplies throughout the United States. They primarily distribute their products through independent representatives.

Our client is looking to expand their market into your state and want to comply fully with your sales tax laws. The attached list represents the products to be sold in your state. States frequently have agricultural exemptions which could exempt some or all of these products from sales/use tax due to the nature of their use. Please indicate which products are taxable and which products are exempt by checking the appropriate box on the attached list and return the list in the enclosed envelope.

The list also shows some 'promotional items,' which bear the client's name and are frequently given away at no charge. Generally, sales tax is paid on these items at the time of purchase. Please let us know if any state sales/use tax would apply on the cost of these items as they are distributed to customers in your state. If no sales tax is paid at the time of purchase, or if these items are sold rather than given away, please let us know how that would affect the sales/use tax requirements. Also, please indicate whether any of these products might qualify for the agricultural exemption.

Lastly, if you find that our client is responsible for filing sales/use tax returns in your state, please forward to our attention the necessary forms and applications.

We thank you in advance for your prompt attention to our request.

The Retailers' Occupation Tax does not apply to farm machinery and equipment that is used or leased for use primarily (over 50% of the time) in production agriculture or for use in State or federal agricultural programs. For your information, we have enclosed a copy of 86 Ill. Adm. Code 130.305 which is the Department's regulation for "Farm Machinery and Equipment." The definition of "production agriculture" is set forth under subsection (b) of the regulation and states as follows:

"Production agriculture is the raising of or the propagation of: Livestock, crops for sale for human consumption; crops for livestock consumption; and production seed stock grown for the propagation of feed grains and the husbandry of animals or, for the purpose of providing a food product, including the husbandry of blood stock as a main source of providing a food product. Production Agriculture also includes animal husbandry, floriculture, aquaculture, horticulture, and viticulture. (Section 2-35 of the Act)"

Please also note that the type of item is not the only consideration in determining whether or not it will qualify for the exemption. Whether a specific item qualifies for the exemption depends also on how the item will be used by the purchaser. Breeding guns if used for the actual insemination process would generally qualify for the exemption. However, consumable supplies, such as breeding supplies and promotional material, generally do not qualify for the exemption. See subsection (k) of the enclosed copy of 86 Ill. Adm. Code 130.305.

Gross receipts from proceeds from the sale of semen used for artificial insemination of livestock for direct agricultural production are exempt from taxation. 35 ILCS 120/2-5(26) (1996 State Bar Edition). Please note that purchasers that claim the farm machinery and equipment exemption are required to provide the certification or blanket certification described in subsection (m) of Section 130.305.

Under the Illinois Use Tax Act, donors who purchase tangible personal property and give it to customers or clients in Illinois are generally making a taxable use of the donated property. "Use" is defined as the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, (35 ILCS 105/2). If the use occurs in Illinois, Use Tax liability is incurred by the donor at the State rate of 6.25%.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.